

Department of Energy

§ 910.122

PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A [Reserved]

Subpart B—General Provisions

Sec.	
910.120	Adoption of 2 CFR part 200.
910.122	Applicability.
910.124	Eligibility.
910.126	Competition.
910.127	Legal authority and effect.
910.128	Disputes and appeals.
910.130	Cost sharing (EPACT).
910.132	Research misconduct.
910.133	Deviation authority.

Subpart C [Reserved]

Subpart D—Post Award Federal Requirements for For-Profit Entities

910.350	Applicability of 2 CFR part 200.
910.352	Cost principles.
910.354	Payments.
910.356	Audits.
910.358	Profit or fee for SBIR/STTR.
910.360	Real property and equipment.
910.362	Intellectual property.
910.364	Reporting on utilization of subject inventions.
910.366	Export Control and U.S. Manufacturing and Competitiveness.
910.368	Change of control.
910.370	Novation of financial assistance agreements.
910.372	Special award conditions.

APPENDIX A TO SUBPART D OF PART 910—PATENTS AND DATA PROVISIONS FOR FOR-PROFIT ORGANIZATIONS

Subpart E—Cost Principles

910.401	Application to M&O's.
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Subpart F—Audit Requirements for For-Profit Entities

GENERAL

910.500	Purpose.
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AUDITS

910.501	Audit requirements.
910.502	Basis for determining DOE awards expended.
910.503	Relation to other audit requirements.
910.504	Frequency of audits.
910.505	Sanctions.
910.506	Audit costs.
910.507	Compliance audits.

AUDITEES

910.508	Auditee responsibilities.
910.509	Auditor selection.
910.510	Financial statements.
910.511	Audit findings follow-up.
910.512	Report submission.

FEDERAL AGENCIES

910.513	Responsibilities.
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AUDITORS

910.514	Scope of audit.
910.515	Audit reporting.
910.516	Audit findings.
910.517	Audit documentation.
910.518	[Reserved]
910.519	Criteria for Federal program risk.
910.520	Criteria for a low-risk auditee.

MANAGEMENT DECISIONS

910.521	Management decision.
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AUTHORITY: 42 U.S.C. 7101, *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*; 2 CFR part 200.

SOURCE: 79 FR 76024, Dec. 19, 2014, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 910.120 Adoption of 2 CFR part 200.

(a) Under the authority listed above, the Department of Energy adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from 10 CFR part 600 required by DOE statute; adding back coverage specific for For-Profit entities which existed in 10 CFR part 600 which still applies.

§ 910.122 Applicability.

(a) For DOE, unless otherwise noted in Part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit

§910.124

2 CFR Ch. IX (1–1–21 Edition)

not reinvested into the business as profit or dividends to its employees or shareholders.

§910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term “Federal financial assistance,” are applicable to this section. In addition, as used in this section:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company’s voting securities, or indirectly, by control over a majority of that company’s voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with §910.124(d), the company’s participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under §910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and